

REMARKS

In this amendment, no claims are cancelled and claim 25 is added. Accordingly, claims 5, 7-13, 15, 17, 21 and 23-25 are pending.

Claims 5, 7-13, 15, 17, 21 and 23-24 were rejected under 35 U.S.C. § 103(a) as unpatentable over **McMilan**, U.S. Patent No. 6,899,720 (**McMilan**) in view of Henley, Jr., U.S. Patent No. 4,794,656 (Henley). This rejection is respectfully traversed.

The Office Action failed to establish a *prima facie* case of obviousness for at least three reasons. First, the proposed combination of **McMilan** and Henley is based on impermissible hindsight as Henley is nonanalogous art. Second, the Office Action erred in determining the scope and content of **McMilan** and Henley. Last, the Office Action erred in reconciling the differences in the teachings of the prior art and the claimed invention.

HENLEY IS NONANALOGOUS ART

References within the statutory terms of 35 U.S.C. § 102 qualify as prior art for an obviousness determination only when analogous to the claimed invention. *In re Clay*, 966 F.2d 656, 658 (Fed. Cir. 1992). Two separate tests define the scope of analogous prior art: (1) whether the art is from the same field of endeavor, regardless of the problem addressed and, (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. *In re Deminski*, 796 F.2d 436, 442 (Fed. Cir. 1986); see also *In re Wood*, 599 F.2d 1032, 1036 (CCPA 1979).

Henley is from a Different Field of Endeavor

It is readily apparent that Henley is from a different field from that of Applicants' endeavor. Applicant field is that of tourniquets designed for emergency medical use. See Paragraph [0005]. In contrast, Henley is concerned with backboard upon which injured persons are placed and immobilized for transport, e.g., in emergency vehicles. See Henley, Col. 1, lines 8-13. These are two very different fields.

Henley is Concerned With an Unrelated Problem

Likewise, Henley is not reasonably pertinent to the particular problem addressed by the instant inventors. The instant inventors were presented with the problem of developing a tourniquet that an injured person could apply to herself quickly and efficiently using only one hand. Henley addresses the problem of immobilizing injured persons' bodies in a position to prevent further injury for transport to a medical facility. There is no logical relationship between the problem confronting the inventors and that confronting Henley. Not surprisingly, the Office Action fails to show that a person of ordinary skill in the art, seeking to solve the problem of the difficulty of tourniquet deployment, would reasonably be expected or motivated to look to unrelated field of emergency backboards. Moreover, common sense dictates that one would not attempt to use an emergency backboard, designed to immobilize injured persons, as inspiration to employ a rigid base in a tourniquet intended for one-handed deployment. In short, the Office Action has failed to establish a *prima facie* case of obviousness because Henley is nonanalogous art and, as such, is not prior art to this invention and the rejection of claims 5, 7-13, 15, 17, 21 and 23-24 fails as a matter of law.

THERE IS NO EVIDENTIARY SUPPORT FOR THE OBVIOUSNESS REJECTION

Even if Henley were considered prior art, there is insufficient evidence to establish a *prima facie* case of obviousness as to the pending claims.

The Office Action Misinterpreted McMilan

The Office Action erred in assessing the scope and content of McMilan. The Office Action asserts that element 42 of McMilan is a base corresponding to the base recited in claim 5. Applicants are surprised and frustrated by this assertion as it was first raised in the April 7, 2007 Office Action and was successfully traversed in the September 19, 2007 amendment.¹ Reasserting references that have previously been overcome does not advance prosecution of the application. Nevertheless, designation of element 42 of McMilan as a based as recited in claim 5 constitutes factual error. McMilan itself refers to element 42 as a "loop portion" of loop pocket assembly 24. Loop portion 42 is used to secure tightening rod 20 in place. See McMilan, Column 5, lines 17-32. Common sense dictates that loop portion 42 is not a base. Furthermore, there is no evidence in the record to support a conclusion that loop portion 42 is a base as understood by persons of skill in the tourniquet art.²

McMilan and Henley are not Combinable

In view of the misinterpretation of Henley, the Office Action has offered no reasonable rationale as to why a person of skill in the art would have looked to the

¹ In response to Applicants' Remarks, the Office Action stated that the rejection was moot in view of a new ground of rejection.

² The only evidence of record showing what the term base means to a person of skill in the art is U.S. Patent Publication No. 2005/0273134.

teachings of Henley and added a substantially rigid base to McMilan. The Office Action asserts that a person of skill in the art would have modified McMilan by constructing a rigid support in order to restrain patient movement. Tourniquets are not intended to restrain patient movement. The purpose of a tourniquet is to restrict blood flow to a wounded limb **not to restrict movement of the limb**. It is desirable to maintain free range of movement of the limb so that the injured person can use the limb while the tourniquet is deployed. Thus the rationale offered by the Office Action would have **discouraged** the proposed combination.

Further undercutting the Office Action's obviousness finding, the modification to McMillan proposed in the Office Action would render McMilan unsuitable for its intended purpose. Henley discloses an emergency backboard that includes a rigid support board 23 comprised of wood and being of a size and thickness so that persons can be placed on board 23 and be fully supported by board 23 when the person and board 23 are being carried. Col. 6, lines 10-14. It is an indisputable that a board that is of sufficient size and thickness to hold a person during transport could not be integrated into McMilan's tourniquet which, by definition, is intended to be used on a limb to restrict blood flow to the limb.

Notwithstanding the issues of size and scale, board 23 is constructed from wood. If one were to apply a wooden base to McMilan in the manner recited in the claims, it would not function as a tourniquet, i.e., it would not restrict blood flow to the wounded limb because the base would simply lay flat on the limb and would not conform to the

shape of the limb whatsoever. The Office Action does not explain how McMilan would function for its intended purpose if modified as proposed.

In light of the foregoing, it is readily apparent that the Office Action failed to establish a *prima facie* case of obviousness with respect to claim 5 and that claim 5 is properly allowable. Dependent claims 7, 8-13, 15 and 17 are likewise properly allowable.

Turning to claim 21, calls for the tourniquet to include a buckle attached to the base and it further defines the structure of the buckle. The Office Action does not address this claim. That is, the Office Action does not identify any structural element in McMilan, Henley or any other art of record corresponding to the limitation recited in claim 21. As such, claim 21 is asserted to be properly allowable.

Regarding claim 23, it is an independent claim directed to a tourniquet article. The tourniquet article of claim 23 includes a structural member fixedly attached to the base where the strap is sandwiched between at least a portion of the structural member and the base. The Office Action asserts that element 25 shown in Figure 8 of Henley meets this limitation. This assertion defies common sense and there is no support for it in the record. Element 25 of Henley is a head support assembly. Applicants invite an explanation of how a head support assembly has any relevance to tourniquets as the purpose of a tourniquet is to restrict blood flow to the limbs. As depicted in Figs. 1 and 8, there is no strap sandwiched between head support assembly 25 and board 23. The Office Action's assertion is clearly erroneous.

Even if the Office Action had correctly interpreted Henley, the combination proposed would result in a device where the strap 12 (McMilan) would run between head rest assembly 25 and board 23 (Henley) with the handle 20 (McMilan) in communication with strap 12. Absent some explanation in the Office Action as to how such a combination device could possibly function as a tourniquet, the Office Action fails to establish a *prima facie* case of obviousness with the respect to claim 23. It follows that claim 23 is properly allowable. Dependent claim 24 is likewise properly allowable.

Claim 25 is added. Claim 25 is identical to cancelled claim 22. For the reasons set forth above, claim 25 is submitted to be properly allowable.

In view of the foregoing amendments and remarks, it is asserted that the application is in condition for allowance. Reconsideration of the rejection and a favorable action on the merits are respectfully requested.

Respectfully submitted,
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